SECTION 5

CONDITIONS OF CONTRACT

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I. Conditions of contract

A. GENERAL

1. Definitions:

1.1 Terms which are defined in the Contract Data are not also defined in the Conditions of Contract but keep their defined meanings. Bold letters are used to identify defined terms.

- **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Tender.
- **Compensation events** are those defined in Clause 38 hereunder.
- The **Completion Date** is the date of completion of the Works as certified by the Employer in accordance with Sub Clause 46.1.
- The **Contract** is the contract between the Employer and the Contractor to execute, complete and maintain the Works. It consists of the documents listed in Clause 2.2 below.
- The **Contract Data** defines the documents and other information which comprise the Contract.
- The **successful tenderer**/**Contractor** is a person or corporate body who's Tender to carry out the Works has been accepted by the Employer.
- The **Contractor's Tender** is the completed Tender document submitted by the Contractor to the Employer.
- The **Contract price** is the price stated in the Letter of Acceptance/letter of Intent/Detailed work award and thereafter as adjusted in accordance with the provisions of the Contract.
- **Days** are calendar days; **months** are calendar months.
- A **Defect** is any part of the Works not completed in accordance with the Contract.
- The **Defects liability period** is the period named in the Contract Data and calculated from the Completion Date.
- The **Employer**/**Owner** is the party who will employ the Contractor to carry out the Works and shall mean BESCOM and shall include their Legal Representatives, Successors and Assigns.
- **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- The **Initial Contract price** is the Contract Price listed in the Employer's Letter of Intent/Detailed work award.
- The **Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is

specified in the Contract Data. The Intended Completion Date may be revised only by the Employer by issuing an extension of time.

- **Materials** are all supplies, including consumables, used by the contractor for incorporation in the Works.
- **Plant** is any integral part of the Works which is to have a mechanical, electrical, electronic or chemical or biological function.
- The **Site** is the area defined as such in the Contract Data.
- **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Employer.
- The **Start Date** is given in the Contract Data. It is the date when the Contractor shall commence execution of the works. It does not necessarily coincide with any of the Site Possession Dates.
- A **Variation** is an instruction given by the Employer which varies the Works.
- The **Works** are what the Contract requires the Contractor to construct, install, and turn over to the Employer, as defined in the Contract Data.
- **"Bidding Documents**": Means IFT, ITT, CC, SCC, Contract Data, Specification, Drawings, Bill of Quantities, Annexures and all other sections of tender documents including Amendments/Clarifications.
- **'Notice of Award of Contract'/'Letter of Intent to Award the Contract** shall mean the Official Notice issued by the Owner notifying the Contractor that his Bid has been accepted.
- **Engineer in charge** shall mean the Officer appointed by the Owner to act as Engineer from time to time for the purposes of the Contract.
- **“Engineer in charge”** means the **Executive Engineer (EE) / Assistant Executive Engineer (AEE) / Assistant Engineer (AE) / Junior Engineer (JE)** having jurisdiction over the works concerned.
- Tender Inviting Authority means the Chief Engineer (Ele.), BRAZ.
- **‘Engineer’s Representative:** Means,

    1) Chief Engineer (Ele.), BRAZ,BESCOM.
    2) Superintending Engineer, Elecl., C,O&M Concerned Circle.
    3) Executive Engineers, Elecl., C,O&M Concerned Division.

    OR

    4) Any other Engineer who has been assigned with the Job.

2. Interpretation:

2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. EMPLOYER will provide instructions clarifying queries about the Conditions of Contract.

2.2 The documents forming the Contract shall be interpreted in the following order of priority:

1) Detailed Work Award
2) Agreement
3) Letter of Acceptance, notice to proceed with the works
4) Contractor’s Tender
5) Contract Data
6) Conditions of Contract
7) Specifications
8) Drawings
9) BID PROPOSAL SHEETS
10) Any other document listed in the Contract as forming part of the Contract.

3. Law Governing Contract:

3.1 The law governing the Contract is the Laws of India supplanted by the Karnataka Local Acts.

3.2 The Courts of Bangalore shall have exclusive jurisdiction in all matters arising under this Contract.

3.3 The Contractor shall comply with the laws of the country of manufacture concerning the manufacture of the Goods and the laws of India where the same is to be supplied / utilized.

4. EMPLOYER's Decisions:

4.1 Except where otherwise specifically stated, EMPLOYER will decide contractual matters Between the Employer and the Contractor.

5. Delegation:

5.1 EMPLOYER may delegate any of his duties and responsibilities to other people after notifying the Contractor and may cancel any delegation after notifying the Contractor.

6. Communications:

6.1 Communications between parties which are referred to in the conditions are effective only when in writing/e-mail. A notice shall be effective only when it is delivered (in terms of Indian Contract Act).

7. Subcontracting: This clause is deleted.

8. Other Contractors:

8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and the Employer

9. Personnel:

9.1 The Contractor shall employ the technical personnel (of number and qualifications) as may be stipulated by EMPLOYER/GOK from time to time during the execution of the work. The technical staff so employed shall be available at site as may be stipulated by the Employer.

9.2 If EMPLOYER asks the Contractor to remove a person who is a member of the Contractor's staff or his work force stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

10. Employer's and Contractor's Risks:

10.1 The Employer carries the risks which this Contract states are Employer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

11. Employer's Risks:

11.1 The Employer is responsible for the excepted risks which are:

a) rebellion, riot commotion or disorder unless solely restricted to employees of the Contractor arising from the conduct of the Works; or

b) a cause due solely to the design of the Works, other than the Contractor's design; or

c) any operation of the forces of nature (in so far as it occurs on the Site) which an experienced contractor:

i) Could not have reasonably foreseen; or

ii) Could reasonably have foreseen, but against which he could not reasonably have taken at least one of the following measures;

(A) prevent loss or damage to physical property from occurring by taking appropriate measures or

(B) insure against such loss or damage

12. Contractor's Risks:

12.1 All risks of loss of or damage to physical property and of personal injury and death which arise during and in consequence of the performance of the Contract other than the excepted risks are the responsibility of the Contractor.

13. Insurance:

13.1 The Contractor shall prior to commencing the works, effect and thereafter maintain insurances , in the joint names of the Employer and the Contractor, (cover from the first working day after the Start Date to the end of Defects Liability Period), in the amounts stated in the Contract Data:

a) For loss of or damage to the Works, Plants and Materials and the Contractor's equipment;

b) For liability of both Parties for loss, damage, death and injury to third parties or their property arising out of the Contractor's performance of the Contract including the Contractor's liability for damage to the Employer's property other than the Works and

c) For liability of both Parties and of any Employer's representative for death and injury to the Contractor's personnel except to the extent that liability arises from the negligence of the Employer, any Employer's representative or their Employees.

13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Employer for his approval before the Start Date. All such insurance shall provide for compensation to be payable to rectify the loss or damage incurred. All payments received from insurers relating to loss or damage shall be held jointly by the Parties and used for the repair of the loss or damage or as compensation for loss or damage that is not to be repaired.

13.3 If the Contractor fails to effect or keep in force any of the insurances referred to in the previous sub-clauses or fails to provide satisfactory evidence, policies or receipts, the Employer may without prejudice to any other right or remedy, effect insurance for the cover relevant to such default and pay the premiums due and recover the same as a deduction from any other monies due to the Contractor. If no payments is due, the payment of the premiums shall be a debt due.

13.4 Alterations to the terms of insurance shall not be made without the approval of the Employer.

13.5 Both Parties shall comply with any conditions of the insurance policies.

14. Site Investigation Reports:

14.1 The Contractor, in preparing the tender, shall rely on any site investigation reports referred to in the Contract data, supplemented by any information available to the Tenderer.

15. Queries about the Contract Data:

15.1 The EMPLOYER will clarify queries on the Contract Data.

16. Contractor to Construct the Works:

16.1 The Contractor shall execute the Works in accordance with the Specification and Drawings.

17. The Works to be completed by the Intended Completion Date:

17.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the program submitted by the Contractor, as updated with the approval of EMPLOYER, and complete them by the Intended Commissioning Date.

18. Approval by the Employer:

18.1 The Contractor shall submit Specification and drawings showing the proposed Works to Employer, who is to approve them if they comply with the Specifications and Drawings.

18.2 The Contractor shall be responsible for the design of Works

18.3 Employer's approval shall not alter the Contractor's responsibility for design of the Works.

18.4 The Contractor shall obtain approval of third parties to the design of third parties to the design of the Works where required

18.5 All Drawings prepared by the Contractor for the execution of the Works, are subject to prior approval by Employer before their use.

19. Safety:

19.1 The Contractor shall be responsible for the safety of all activities on the Site.

20. Discoveries:

20.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site is the property of EMPLOYER. The Contractor is to notify EMPLOYER of such discoveries and carry out EMPLOYER's instructions for dealing with them.

21. Possession of the Site:

21.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data the Employer is deemed to have delayed the start of the relevant activities and this will be Compensation Event.

22. Access to the Site:

22.1 The Contractor shall allow EMPLOYER and any person authorized by EMPLOYER access to the Site, to any place where work in connection with the Contract is being carried out or is intended to be carried out and to any place where materials or plant are being manufactured/ fabricated/assembled for the works.

22.2 **The Contractor shall establish a store for storage of materials within the jurisdiction of the awarded area for easy transportation of materials to the work spot.**

23. Instructions:

23.1 The Contractor shall carry out all instructions of EMPLOYER which comply with the applicable laws where the Site is located.

24. Procedure for Resolution of Disputes:

24.1 If the Contractor is not satisfied with the decision taken by the Employer, the dispute shall be referred by either party to Arbitration within 30 days of the notification of the Employer's decision.

24.2 If neither party refers the dispute to Arbitration within the above 30 days, the Employer's decision will be final and binding.

24.3 The Arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract.

B. TIME CONTROL

25. Program/ Activity chart:

25.1 Within the time stated in the Contract Data the Contractor shall submit to EMPLOYER for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works.

25.2 The EMPLOYER's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to EMPLOYER again at any time for approval. A revised Program is to show the effect of Variations and Compensation Events.

26. Extension of the Intended Commissioning Date:

26.1 The EMPLOYER shall extend the Intended Commissioning Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Commissioning to be achieved by the Intended Commissioning Date.

26.2 The EMPLOYER shall decide whether and by how much to extend the Intended Commissioning Date within 21 days of the Contractor asking EMPLOYER for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information.

27. Delays ordered by the Employer:

27.1 The Employer may instruct the Contractor to delay the start or progress of any activity within the Works.

28. Management Meetings:

28.1 The EMPLOYER may require the Contractor to attend a management meeting. The business of a management meeting shall be to review the progress achieved and the plans for remaining work.

28.2 The responsibility of the parties for actions to be taken is to be decided by EMPLOYER either at the management meeting or after the management meeting and stated in writing to be distributed to all who attended the meeting.

C. QUALITY CONTROL

29. Identifying Defects:

29.1 The EMPLOYER shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. EMPLOYER may instruct the Contractor to search for a Defect and to uncover and test any work that EMPLOYER considers may have a Defect.

30. Tests:

30.1

30.1 If the EMPLOYER instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it

does, the Contractor shall pay for the test and any samples. If there is no Defect the test shall be a Compensation Event.

31 Correction of Defects:

31.1 The EMPLOYER shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins after successful Commissioning and is defined in the Contract Data. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.

31.2 Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by EMPLOYER notice.

32. Uncorrected Defects:

32.1 If the Contractor has not corrected a Defect within the time specified in EMPLOYER's notice, EMPLOYER's will assess the cost of having the Defect corrected, and the Contractor will pay this amount.

D. COST CONTROL

33. Bill of Quantities (BOQ):

33.1 The BOQ shall contain items for the construction, installation, testing, and commissioning work to be done by the Contractor.

33.2 The BOQ is used to calculate the Contract Price. The Contractor is paid for the quantity of the work done at the rate as per terms & conditions of the Contract.

34. Variations:

34.1 The EMPLOYER shall have power to order the Contractor to do any or all of the following as considered necessary or advisable during the progress of the work by him

a) Increase or decrease of any item of work included in the Bill of Quantities (BOQ)/ Work Award;
b) Omit any item of work;
c) Change the character or quality or kind of any item of work;
d) Change the levels, lines, positions and dimensions of any part of the work;
e) Execute additional items of work of any kind necessary for the completion of the works; and
f) Change in any specified sequence, methods or timing of construction of any part of the work.

34.2 The Contractor shall be bound to carry out the work in accordance with any instructions in this connection, which may be given to him in writing by EMPLOYER and such alteration shall not vitiate or invalidate the contract.

34.3 Variations shall not be made by the Contractor without an order in writing by EMPLOYER, provided that no order in writing shall be required for increase or decrease in the quantity of an item appearing in the BOQ/Work Award so long as the work executed conforms to the approved drawings/Designs.

34.4 During the execution of the Contract, BESCOM reserves the right to increase or decrease the quantities of items under the Contract without any change in the unit price or other terms and conditions. Such variations shall not be subject to any limitations for individual items; however, the total variation in all such items under the Contract shall be limited to the total contract value. Further, BESCOM reserves the right to increase or decrease the total contract value by an amount not exceeding 25% of the value of the total contract value. For the total cost variation, the matter shall be referred to the Chief Engineer Ele., BRAZ, BESCOM for approval.

34.5 The Contractor shall be responsible for supply and execution of such final quantities for completion of the work and they shall be paid for such finalized quantity at the unit rate indicated in the price schedule.

34.6 **Any equipment's/materials which are not included in the price schedule of supply and erection part of the contract, but required to complete the work shall be carried out by the successful bidder on recommendation of the Engineer-in-charge as well as approval from the Chief Engineer Ele., BRAZ, BESCOM at prevailing SR rate + approved tender premium + GST and shall be considered to be included in the scope of the work.**

35 Payments for Variations:

35.1 Payment for increase in the quantities of an item in the BOQ up to 25% of that provided in the Bill of Quantities shall be made at the rates quoted by the Contractor.

35.2 For quantities in excess of 125% of the tendered quantity of an item as given in the BOQ, the Contractor shall be paid at the rate entered in or derived from in the Schedule of Rates (applicable for the area of the work and current at the

time of award of contract) plus or minus the overall percentage of the original tendered rates over the current Schedule of Rates prevalent at the time of award of contract.

35.3 If there is no rate for the additional, substituted or altered item of the work in the BOQ, efforts would be made to derive the rates from those given in the BOQ or the Schedule of Rates (applicable for the area of the work and current at the time of award of contract) and if found feasible the payment would be made at the derived rate for the item plus or minus the overall percentage of the original tendered rates over the current Schedule of Rates prevalent at the time of award of contract.

35.4 If the rates for additional, substituted or altered item of work cannot be determined either as at 35.1 or 35.2 or 35.3 above, the Contractor shall be requested to submit his quotation for the items supported by analysis of the rate or rates claimed, within 7 days.

35.5 If the Contractor's quotation is determined unreasonable, EMPLOYER may order the Variation and make a change to the Contract Price which shall be based on EMPLOYER’s own forecast of the effects of the Variation on the Contractor's costs.

35.6 If EMPLOYER decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

35.7 Under no circumstances the Contractor shall suspend the work on the plea of non-settlement of rates for items falling under this Clause.

36 Submission of Bills for Payment:

36.1 The Contractor shall submit to EMPLOYER monthly bills of the value of the work completed less the cumulative amount paid previously.

36.2 The EMPLOYER shall check the Contractor's bill and determine the value of the work executed which shall comprise of (i) value of the quantities of the items in the BOQ completed and (ii) valuation of Variations and Compensation Events.

36.3 The EMPLOYER may exclude any item paid in a previous bill or reduce the proportion of any item previously paid in the light of later information.

37 Payments:

37.1 Payments shall be adjusted for deductions, other recoveries in terms of contract and taxes, at source, as applicable under the law. The contractor shall be liable to pay penalty for shortfall in progress.

37.2 The Payment to the Contractor for the Performance of the Works under the Contract will be made by the Owner as per the guidelines and Conditions specified herein and as per the payment terms stipulated vide clause no. 37.3 of conditions of contract. All Payment made during the Contract shall be on account Payments only. The final Payment will be made on Completion of all Works and on fulfillment by the Contractor of all his liabilities under the Contract.

37.3 TERMS OF PAYMENT:

37.3.1. All the Payments will be made by the Executive Engineer (Ele) of the O&M Division under whose supervision the Contract Work is executed.

37.3.2. **Payment** towards **supply for Materials:**

(1) **Twenty five percent (25%)** of the Ex-Works price, plus 100% of applicable taxes (i.e., CGST, SGST, IGST, UTGST, Customs Duties on Imports, Cess, if any) and 100% of Freight & Insurance (F&I) charges in respect of the turnkey materials supplied against work award(s)/order(s) issued under the contract, shall be paid upon receipt of the turnkey materials at the site, subject to the submission of the following documents:

a) Copy of the Certificate of Transit Insurance.
b) Pre-dispatch clearance certificate issued by the owner, prior to dispatch of the consignment.
c) Packing list / Bill of Materials.
d) Contractor’s Detailed Invoice.
e) Copy of Delivery Challan.
f) Copy of E-way Bill.
g) Certificate of Physical Verification, duly issued by the Engineer-in-Charge along with the receipt and acceptance of materials at the Contractor’s store.

(2) **Sixty five percent (65%)** of the Ex-Works price of materials supplied shall be paid progressively upon completion of each work

award/order, subject to certification by the **Engineer-in-Charge** and submission of the following :

a) Physical Verification Certificate issued by the site Engineers along with the quantum of works executed and successful completion.

b) Request letter along with challan of payment made to the Electrical inspectorate, GoK for seeking approval to commissioning of the lines as applicable.

c) Captured data of longitude and latitude of the location of Street light metering point along with photographs of metering point.

(3) **Ten percent (10%)** of the Ex-Works price of materials supplied shall be paid upon successful commissioning of each work award/order, subject to certification by the **Engineer-in-Charge** and submission of the following:

a) Taking Over Certificate as per Clause 9.0 of Section V, Special Conditions of Contract (SCC).

b) Approval letter from the Electrical Inspectorate, GoK, for commissioning of lines as applicable.

37.3.3. **Payment towards Erection of Materials:**

(1) **Ninety percent (90%)** of the total **erection price component**, along with **100% of applicable taxes** (CGST, SGST, IGST, UTGST, levies, surcharge/cess, if any), shall be paid progressively upon completion of each work award/order, subject to certification by the **Engineer-in-Charge** and submission of the following :

a) Physical Verification Certificate issued by the site Engineers confirming the quantum of works executed and successful completion.

b) Request letter along with challan of payment made to the Electrical inspectorate, GoK for seeking approval to commissioning of the lines as applicable.

c) Captured data of longitude and latitude of the location of Street light metering point along with photographs of metering point.

(2) **Ten percent (10%)** of the total erection price component shall be released after successful commissioning of each work award/order,

duly certified by the **Engineer-in-Charge**, upon submission of the following:

a) Taking Over Certificate as per Clause 9.0 of Section V, Special Conditions of Contract (SCC).

b) Approval letter from the Electrical Inspectorate, GoK, for commissioning of lines as applicable.

37.3.4 The Bills will be passed on the basis of the following certificates:

a) Certificate recorded by the Contractor on the invoice/bills that the Materials/Equipment's are supplied and erected as per the Terms and Conditions of the contract along with the details of materials received from BESCOM division store, utilized and returned to the BESCOM store.

b) Certificate recorded by the Junior Engineer, Elec/Asst. Engineer, Elec designated as "Site Engineer or Engineer in charge of Work" to the effect that the Materials/Equipment's are actually received in the Store of the Turnkey Contractor or at Site as per the Terms and Conditions of the contract along with the details of materials received from BESCOM division store, utilized and returned to the BESCOM store.

c) Certificate by the Asst. Executive Engineer, Elec, who is the Sub-Divisional Officer in charge of the Contract to the effect of the verification of the work executed in terms of quantity and quality.

d) Countersignature of the Executive Engineer, Elec in charge of the Work and who is the Divisional Officer under whose jurisdiction the Contract is being executed to the effect of the verification of the work executed in terms of quantity and quality.

e) Certification of all above points shall be recorded in the MB book by the concerned Engineer in charge of work while forwarding for arranging payment.

37.3.3 Procedure for submission of bills and payments:

a. The authorized representatives of the Engineer-in-charge and the Contractor shall jointly take the measurements. The representative of the Engineer-in-charge will give a 15 days' notice to the Contractor of his intention to record the measurement immediately on report of completion & commission of individual work award/order by the Contractor in all respects and if the Contractors' representative fails to join the Engineer-in-charge representative then proceed with the measurements by himself and the Contractor shall have to accept these measurements as correct and binding on him.

b. The Contractor shall submit an application /Bill in quadruplicate (4 copies) to the Engineer-in-charge in prescribed form approved by the Engineer along with the joint measurements and relevant documents & certification as stated in 37.3.2 above.

c. Payment will be made as per actual at the approved prices of Detailed work Award (DWA) and procedure prevalent in BESCOM.

d. Payment will be made at the accepted rates for all works done according to the specifications and measurements and after commissioning the same. However, where approval of the Inspectorate authorities is required under statute, payment shall be made only after such approval and after the work is duly charged.

e. It is the responsibility of the Contractor to care and protection of the materials at his own cost and his liability to make good the damage if any, unless and until the whole work is deemed to have been completed and commissioned and handed over to the BESCOM, in accordance with the terms and conditions of the Contract.

f. The payments to Contractor are subject to recoveries, which are due from the Contractor.

g. The final settlements under the contract should be claimed within 3 Months from the date of expiry of the contract.

38 Compensation Events:

38.1 The following are Compensation events unless they are caused by the Contractor:

(a) The Employer does not give access to a part of the Site by the Site Possession Date stated in the Contract Data.

(b) The Employer orders a delay or does not issue drawings, specifications or instructions required for execution of works on time.

(c) The Employer instructs the Contractor to uncover or to carry out additional tests upon work which is then found to have no Defects.

(d) The Employer gives an instruction for dealing with an unforeseen condition, caused by the Employer, or additional work required for safety or other reasons.

(e) The effect on the Contractor of any of the Employer's Risks.

(f) The Employer unreasonably delays issuing a Certificate of Completion.

(g) Other Compensation Events listed in the Contract Data or mentioned in the Contract.

If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date is extended. The Employer shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.

As soon as information demonstrating the effect of each Compensation event upon the Contractor's forecast cost has been provided by the Contractor, it is to

be assessed by the Employer and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Employer shall adjust the Contract Price based on Employer's own forecast. The Employer will assume that the Contractor will react competently and promptly to the event.

The Contractor shall not be entitled to compensation to the extent that the Employer's interests are adversely affected by the Contractor not having given early warning or not having cooperated with the Employer.

39 Tax:

39.1 The rates quoted by the Contractor shall be deemed to be inclusive of all applicable duties, cess, & levies and **excluding GST** that the Contractor will have to pay for the performance of this Contract. Applicable GST will be paid separately by the Employer. The Employer will perform such duties in regard to the deduction of such taxes at source as per applicable law.

40 Price Adjustment:

40.1 The Prices shall remain fixed during the Contract period and shall not be subjected to variation on any account.

41

Penalty:

41.1 The Contractor shall pay Penalty to EMPLOYER stated as in the bid documents that the Commissioning Date is later than the Intended Commissioning Date. The total amount of Penalty shall not exceed the amount defined in the contract data. EMPLOYER may deduct Penalty from payments due to the Contractor. Payment of Penalty does not affect the Contractor's liabilities.

41.2 If the Intended Commissioning Date is extended after Penalty has been paid, the Employer shall correct any overpayment of Penalty by the Contractor by adjusting the next payment of bill.

42. Advance Payments:

42.1 The Employer shall make payment to the Contractor of the amounts stated in the Contract Data by the date stated in the Contract Data, against provision by the Contractor of an unconditional bank guarantee in a form acceptable to the Employer issued by a Nationalized/Scheduled Bank in amounts equal to the advance payment. The guarantee shall remain effective until the advance payment has been repaid, but the amount of the guarantee shall be

progressively reduced by the amounts repaid by the Contractor. Interest will not be charged on the advance payment.

42.2. The Contractor is to use the advance payment only to pay for Mobilization expenses required specifically for execution of the Works. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Employer.

42.3 The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuation of the work done, variations, price adjustments, compensation events or liquidated damages.

43. Securities:

43.1 The Security deposit (including additional security for unbalanced tenders) shall be provided to EMPLOYER no later than the date specified in the Letter of Intent to award and shall be issued in an amount and form and type of instrument acceptable to EMPLOYER. The Security deposit shall be valid until a date 90 days from the date of expiry of Defects Liability Period and the additional security for unbalanced tenders shall be valid until a date 90 days from the date of issue of the certificate of completion.

44. Cost of Repairs:

44.1 Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

E. FINISHING THE CONTRACT

45. Completion:

45.1 The Contractor shall request EMPLOYER to issue a Certificate of Completion of the Works and EMPLOYER will do so upon deciding that the Work is completed.

46. Taking Over:

46.1 EMPLOYER shall take over the Site and the Works within seven days of issuing a certificate of Completion.

46.2 Upon successful Completion of all the Tests to be performed at Site on Equipment's erected by the Contractor, the Engineer shall issue to the Contractor a **"Taking over Certificate"** as a proof of the final acceptance of the Equipment. Such Certificates shall not reasonably be withheld nor will the Engineer delay the issuance thereof on account of minor omissions or defects, which do not affect the Commercial Operation and/or cause any serious risk to the Equipment. Such Certificates shall not relieve the Contractor of any of his obligations, which otherwise survive by the Terms and Conditions of the Contract after issuance of such Certificate.

47. Final Account:

The Contractor shall supply to EMPLOYER a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. EMPLOYER shall issue a Defect Liability Certificate and certify any final payment that is due to the Contractor if it is correct and complete. If it is not, EMPLOYER shall issue a schedule that states the scope of the corrections or additions that are necessary. If the Final Account is still unsatisfactory after it has been resubmitted, EMPLOYER shall decide on the amount payable to the Contractor and make payment.

48. As built drawings and /or Operating and Maintenance Manuals:

48.1 If "as built" Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the Contract Data.

48.2 If the Contractor does not supply the Drawings by the dates stated in the Contract Data, or they do not receive EMPLOYER's approval, EMPLOYER shall withhold the amount stated in the Contract Data from payments due to the Contractor.

49. Termination:

49.1 The Employer may terminate the Contract if the other party causes a fundamental breach of the Contract.

49.2 Fundamental breaches of Contract include, but shall not be limited to the following:

a) The Contractor stops work for 45 days when no stoppage of work is shown on the current Program/Activity Chart and the stoppage has not been authorized by the Employer;

b) Deleted

c) The Contractor becomes bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

d) Deleted

e) The Employer gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Employer;

f) The Contractor does not maintain a security which is required;

g) The Contractor has delayed the completion of works by the number of days for which the maximum amount of Penalty can be paid as defined in the Contract data; and

h) If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in the executing the Contract.

For the purpose of this paragraph : "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among Tenderers (prior to or after Tender submission) designed to establish Tender prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition."

49.3 When either party to the Contract gives notice of a breach of contract to the Employer for a cause other than those listed under Sub Clause 49.2 above, the Employer shall decide whether the breach is fundamental or not.

49.4 Notwithstanding the above, the Employer may terminate the Contract for convenience.

49.5 If the Contract is terminated the Contractor shall stop work immediately, make the Site safe and secure and leave the Site as soon as reasonably possible.

49.6 Suspension of Work:

49.6.1 The Owner reserves the right to suspend and reinstate execution of the whole or any part of the Works without invalidating the provisions of the Contract. Orders for suspension or reinstatement of the Works will be issued by the Engineer to the Contractor in writing. The time for

Completion of the Works will be extended for a period equal to duration of the suspension.

49.6.2 Any necessary and demonstrable Cost incurred by the Contractor as a result of such suspension of the Works will be paid by the Owner, provided such Costs are substantiated to the satisfaction of the Engineer. The Owner shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the Contractor or his Sub-Contractor.

49.7 Contractor's Default

49.7.1 If the Contractor shall neglect to execute the Works with due diligence and expediency or shall refuse or neglect to comply with any reasonable Order given to him, in writing by the Engineer in connection with the Works or shall contravene the provisions of the Contract, the Owner may give Notice in writing to the Contractor to make good the failure / neglect or contravention complained of.

49.7.2 The Contractor fail to comply with the Notice within thirty (30) days from the date of serving the Notice, then and in such case the Owner shall be at liberty to employ other Workmen and forthwith execute such part of the Works as the Contractor may have neglected to do or if the Owner shall think fit, without prejudice to any other right he may have under the Contract to take the Work wholly or in part out of the Contractor’s hands and re-Contract with any other Persons or Persons to complete the Works or any part thereof and in that event the Owner shall have free use of all Contractor’s Equipment that may have been at the time on the Site in connection with the Works without being responsible to the Contractor for fair wear and tear thereof and to the exclusion of any right of the Contractor over the same, and the Owner shall be entitled to retain and apply balance which may otherwise be due on the Contract by him to the Contractor, or such part of the Works or of completing the Works as the case may be.

49.7.3 If the Cost of completing the Works or executing a part there of as aforesaid shall exceed the balance due to the Contractor, the Contractor shall pay such excess amount. Such Payment of excess amount shall be

independent of the **Penalty** for delay, which the Contractor shall have to pay if the Completion of Works is delayed.

49.7.4 In addition, such action by the Owner as aforesaid shall not relieve the Contractor of his liability to pay **Penalty** for delay in Completion of Works as defined in Clause 41 of CC.

49.7.5 Such action by the Owner as aforesaid the termination of the Contract under this Clause shall not entitle the Contractor to reduce the value of the Contract Performance Guarantee nor the time thereof. The Contract Performance Guarantee shall be valid for the full value and for the full period of the Contract including Guarantee period.

49.8 Termination of Contract on Owner's Initiative

49.8.1 The Owner reserves the right to terminate the Contract either in part or in full due to reasons other than those mentioned under Clause entitled Contractor's Default. The Owner shall in such an event give fifteen (15) days' Notice in writing to the Contractor of his decision to do so. The Contractor, upon receipt of such Notice, shall discontinue the Work on the date and to the extent specified in the Notice, make all reasonable efforts to obtain cancellation of all Orders and Contracts to the extent they are related to the Work terminated and terms Satisfactory to the Owner. Stop all further Sub-Contracting or purchasing activity related to the Work terminated, and assist the Owner in Maintenance, Protection, and Disposition of the Works acquired under the Contract by the Owner.

49.8.2 In the event of such a termination the Contractor shall be paid the amount due to him for the work already under taken. If the Contractor is an individual or a Proprietary Concern and the individual or the proprietor dies and if the Contractor is a Partnership Concern and one of the Partners dies, then unless the Owner is satisfied that the legal Representatives of the individual Contractor or of the Proprietor of the Propriety Concern and in the case of Partnership, the surviving Partners, are capable of carrying out and completing the Contract, the Owner shall be entitled to cancel the Contract as to its incomplete part without being in any way liable to Payment of any compensation to the estate of deceased Contractor and/or to the Surviving Partners of the Contractor's

Firm on account of the cancellation of the Contract except the amount which has already become due and payable. The decision of the Owner that the legal Representatives of the deceased Contractor or Surviving Partners of the Contractor, cannot carryover and complete the Contract, shall be final and binding on the Parties. In the event of such cancellation the Owner shall not hold the estate of the deceased Contractor and/or the Surviving Partners of the Contractor's Firm liable to Damages for not completing the Contract.

49.9 Delays in the Contractor's Performance:

Delay by the Contractor in the Performance of his obligations under the Contract shall render the Contractor liable for the following sanctions:

a. Forfeiture of his Performance Guarantee.
b. Imposition of Penalty and
c. Termination of Contract for default as detailed herein.

If, at any time during Performance of the Contract, the Contractor should encounter conditions impending timely delivery of the Goods and for Performance of Services, the Contractor shall promptly notify the Owner, in writing, of the fact of the delay, its likely duration and its cause(s). Upon receipt of the Contractor's request, the Owner shall evaluate the situation and may, at his discretion, extend the time for Performance, in which case the extension shall be ratified by an amendment to Notification of Award/Contract Agreement.

49.10 Frustration of Contract:

49.10.1 In the event of Frustration of the Contract because of supervening impossibility in terms of Section 56 of the Indian Contract Act, the Parties shall be absolved of their responsibility to perform the balance portion of the Contract, subject to provisions contained in sub-Clause 49.10.3 below.

49.10.2 In the event of non-availability or suspension of Funds for any reasons whatsoever (except for reason of willful or flagrant breach by the Owner) and or Contractor then the Work under the Contract shall be suspended. Furthermore, if the Owner is unable to make Satisfactory, alternative

arrangements for Financing to the Contractor in accordance with the terms of the Contract within three Months of the event, the Parties hereto shall be relieved from carrying out further obligations under the Contract treating it as Frustration of the Contract.

49.10.3 In the events referred to in Sub-Clauses 49.10.1 and 49.10.2 above, the Parties shall mutually discuss to arrive at reasonable settlement on all issues including amounts due to either Party for the Work already done on "Quantum Merit" basis that shall be determined by mutual agreement between the Parties.

49.11 Grafts and Commissions etc:

Any Graft, Commission, Gift or advantage given, promised or Offered by or on behalf of' the Contractor or his Partner, Agent, Officers, Director, Employee or Servant or any one on his or their behalf in relation to the obtaining or to the execution of this or any other Contract with the Owner, shall in addition to any Criminal liability which it may incur subject the Contractor to the cancellation of this and all other Contracts and also to Payment of any loss or Damage to the Owner resulting from any cancellation. The Owner shall then be entitled to deduct the amount so payable from any money otherwise due to Contractor, under the Contract.

50. Payment upon Termination:

50.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, EMPLOYER shall prepare bill for the value of the work done less advance payments received up to the date of the bill, less other recoveries due in terms of the contract, less taxes due to be deducted at source as per applicable law and less the percentage to apply to the work not completed as indicated in the Contract Data. Additional penalty shall not apply. If the total amount due to EMPLOYER exceeds any payment due to the Contractor the difference shall be a debt payable to EMPLOYER.

50.2 If the Contract is terminated at EMPLOYER's convenience or because of a fundamental breach of Contract by EMPLOYER, EMPLOYER shall prepare bill for the value of the work done, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on

the Works, and the Contractor's costs of protecting and securing the Works and less advance payments received up to the date of the certificate, less other recoveries due in terms of the contract, and less taxes due to be deducted at source as per applicable law and make payment accordingly.

51. Property:

51.1 All materials on the Site, Plant, Equipment, Temporary Works and Works are deemed to be the property of the EMPLOYER, if the Contract is terminated because of a Contractor’s default.

52. Release from Performance:

52.1 If the Contract is frustrated by any event entirely outside the control of either EMPLOYER or the Contractor EMPLOYER shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which commitment was made.

Chief Engineer Ele.,
BRAZ, BESCOM